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MICHAEL R. REINEMANN
CESARI AND MCKENNA
30 ROWES WHARF
BOSTON, MA 02110

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In re Application of :
Michael F. Morganelli et al. :
Application No. 09/483,759 : DECISION REFUSING STATUS
Filed: January 14, 2000 : UNDER 37 CFR 1.47(a)
Attorney Docket No. 130017-0010 :

This is in response to the "Petition Under 37 CFR 1.47(a)," filed August 23, 2000.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on January 14, 2000 without an executed oath or declaration and naming Michael F. Morganelli; Christopher J. Phillips and Gerard M. Reilly as joint inventors.

Accordingly, on February 24, 2000, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, filing fee, and a surcharge for their late filing.

In response, on August 23, 2000, petitioner filed a \$65.00 surcharge fee, a four month extension of time fee of \$680.00, \$345.00 in filing fee, a Declaration and Power of Attorney signed by inventors Michael F. Morganelli and Christopher J. Phillips, a small entity statement, a declaration from Thomas K. Zebrowski, the instant petition and petition fee.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) set forth above.

As to item (1), Rule 47 applicant has failed to adequately show or provide proof that nonsigning inventor Gerard Reilly has refused to sign the declaration after having been presented with the application papers (specification, claims and drawings). In this regard, while the declaration of Thomas Zebrowski states that the application papers, Declaration and Power of Attorney and Assignment were mailed to nonsigning inventor Reilly for his signature, no evidence has been presented showing that these papers were in fact received by the nonsigning inventor. Did the nonsigning inventor receive the application papers? See Manual of Patenting Examining Procedure, Section 409.03(d). Copies of documentary evidence such as certified mail return receipt, telegrams, etc., to support a conclusion that the nonsigning inventor has refused to join in the application after having been presented with the application papers must be submitted.

Where there is an express or oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

The application file does not indicate a change of address has been filed in this case, although the address given on

the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

In order to expedite consideration of the petition under 37 CFR 1.47(a), petitioner may wish to consider submitting the renewed petition by facsimile transmission to the telephone number indicated below and to the attention of Wan Laymon.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Special Program Law Office

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision should be directed to Wan Laymon at (703) 306-5685.


Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:
Cesari and McKenna LLP
88 Black Falcon Avenue
Boston, MA 02210